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WEALTHY GROWTH SDN BHD v. MENTERI KEWANGAN MALAYSIA; KETUA PENGARAH HASIL DALAM NEGERI (INTERVENER)

HIGH COURT MALAYA, KUALA LUMPUR
NOORIN BADARUDDIN J
B [JUDICIAL REVIEW NO: WA-25-175-05-2021]
3 DECEMBER 2022

Abstract – *The judicial review application is solely to review the decision-making process of the Minister of Finance ('Minister') under s. 135 and/or s. 127(3A) of the Income Tax Act 1967 and the provisions allow any person, such as the applicant, to seek exemption from the Minister. As such, the application to intervene at this stage by the Director General of Inland Revenue ('DGIR') is premature as the DGIR is not in any way involved in the decision-making process. At the leave stage, the court has yet to decide whether there is in fact a 'decision' made by the Minister and whether such 'decision' is susceptible to judicial review. The DGIR therefore does not fulfil the 'proper person' test under O. 53 r. 8 of the Rules of Court 2012.*

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ADMINISTRATIVE LAW: *Judicial review – Proceedings – Application to intervene – Whether applicant had direct and legal interest in proceedings – Test of 'proper person' – Whether fulfilled – Whether application premature – Whether application ought to be ventilated at substantive stage and not at leave stage – Income Tax Act 1967, ss. 127(3A) & 135 – Rules of Court 2012, O. 53 r. 8*

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CIVIL PROCEDURE: *Parties – Intervention – Judicial review proceedings – Whether applicant had direct and legal interest in proceedings – Test of 'proper person' – Whether fulfilled – Whether application premature – Whether application ought to be ventilated at substantive stage and not at leave stage – Income Tax Act 1967, ss. 127(3A) & 135 – Rules of Court 2012, O. 53 r. 8*

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CIVIL PROCEDURE: *Intervention – Application for – Judicial review proceedings – Whether applicant had direct and legal interest in proceedings – Test of 'proper person' – Whether fulfilled – Whether application premature – Whether application ought to be ventilated at substantive stage and not at leave stage – Income Tax Act 1967, ss. 127(3A) & 135 – Rules of Court 2012, O. 53 r. 8*

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This was the application (encl. 15) of the Director General of Inland Revenue's ('DGIR') to intervene in the applicant's judicial review under O. 53 r. 8 of the Rules of Court 2012 ('ROC'). The applicant had filed an application for leave to apply for an order of *certiorari* for the respondent to
I exercise his powers under s. 135 and/or s. 127(3A) of the Income Tax Act 1967 ('ITA') to set aside or exempt the taxes raised by the DGIR against the applicant on the grounds that the taxes raised were illegal, void, unlawful

and/or in excess of authority, unreasonable, irrational and denial to the legitimate expectation of the applicant. The applicant, a company principally engaged in the business of property development, had made payment to the Johor State Government in order to convert Bumiputera units to non-Bumiputera units in consequence of the applicant not being able to sell the Bumiputera lots to Bumiputera purchasers according to the supplemental agreement entered into between the appellant with the Johor State Government. The DGIR disallowed the deduction of the payment on the ground that it did not fall under s. 33 of the ITA. Summarily, it was the DGIR's submission that being the head of a statutory body responsible to collect and administer tax in Malaysia under s. 134 of the ITA, the DGIR had direct and legal interest in these proceedings and/or in determining the issues in the questions raised by the applicant which later would cause material/significant implication to the law in taxation, collection of tax and public interest. The applicant, however, took the position that the DGIR failed to fulfil the test of being a 'proper person' to intervene at this leave stage as the current judicial review application at hand was solely to review the decision-making process of the respondent under s. 135 and/or s. 127(3A) of the ITA and that the DGIR's application at this stage was premature on the sole basis that the DGIR was not in any way involved in the decision-making process under s. 135 and/or s. 127(3A) of the ITA. The sole issue to be determined was whether the DGIR ought to be allowed to intervene at this leave stage of the judicial review application by the applicant.

Held (dismissing encl. 15):

(1) In exercising a discretionary power under O. 53 r. 8 of the ROC whether to allow a party to intervene and where there are no written grounds by the Court of Appeal in the case of *Puncak Niaga Construction Sdn Bhd v. Menteri Kewangan Malaysia* ('*Puncak Niaga*'), the question remained whether the DGIR could automatically be allowed to intervene in every application for judicial review relating to tax matters where the 'decision' relates to the respondent and the respondent alone at the leave stage. Without the written grounds of judgment by the Court of Appeal, the *ratio decidendi* of *Puncak Niaga* could not be ascertained. (paras 14 & 17)

(2) The DGIR's application should be ventilated at the substantive stage. Apart from the finding that the DGIR's legal reasoning would not be in access to the respondent's argument and that both their arguments would be similar, to allow DGIR's application at this stage would run the risk of causing a delay to the applicant's leave application where the ordinary threshold was low with the sole questions being whether the application was frivolous and whether there was an arguable case. (para 17)

(3) Since the DGIR did not state that he was to advise the respondent or was actively involved in assisting the respondent on matters arising from the decision-making process of the latter pursuant to s. 127(3A) and/or s. 135 of the ITA, the DGIR at best had only an indirect interest to the applicant's application. The reasons given by the DGIR were insufficient to show that he was a proper person with direct interest and any additional argument that the DGIR wished to raise could be raised through the respondent. At this stage, the DGIR did not fulfil the 'proper person' test under O. 53 r. 8 of the ROC. The DGIR's interest was purely financial. The Inland Revenue is just an agent to collect taxes for the Ministry of Finance/Government. Financial interest is not a direct interest. (paras 20-22)

(4) Since the current judicial review application at hand was solely to review the decision-making process of the respondent under s. 135 and/or s. 127(3A) of the ITA and the provisions allow any person such as the applicant to seek exemption from the Minister of Finance, the DGIR's application at this stage was premature on the sole basis that the DGIR was not in any way involved in the decision-making process under s. 135 and/or s. 127(3A) of the ITA. The DGIR has no say and role in the respondent's decision-making process. At the leave stage, the court has yet to decide whether there was in fact a 'decision' made by the respondent in the first place and whether such 'decision' was susceptible to judicial review. It was solely between the respondent and the applicant to ventilate this issue. A proper scrutiny of the provisions of ss. 127(3A)) and 135 of the ITA show that the discretion was vested solely in the Minister and not the DGIR and as such the power exercise under these provisions are vested exclusively in the respondent alone. The respondent must exercise that power personally since the trust was being placed upon him. (paras 23, 24 & 28)

(5) In accordance with the case of *Teh Guat Hong v. Perbadanan Tabung Pendidikan Tinggi Nasional*, there was no necessity to go into the merits of the case at leave stage. As such, the DGIR's application should not be allowed as the merits of the case would only be raised at the substantive stage. (para 30)

Case(s) referred to:

Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals [2020] 1 CLJ 162 FC ***(refd)***

Chin Mee Keong & Ors v. Pesuruhjaya Sukan [2007] 5 CLJ 363 CA ***(refd)***

Ketua Pengarah Hasil Dalam Negeri v. Rainforest Heights Sdn Bhd [2019] 1 LNS 513 HC ***(refd)***

Krishnadas Achutan Nair & Ors v. Maniyam Samykano [1997] 1 CLJ 636 FC ***(refd)***

Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors [2009] 6 CLJ 405 FC ***(refd)***

Petronas Penapisan (Terengganu) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2014] MSTC 30-078 ***(refd)***

Port Dickson Power Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2012] MSTC 30-045 ***(refd)***
Puncak Niaga Construction Sdn Bhd v. Menteri Kewangan Malaysia [2021] 1 LNS 1032 HC ***(refd)***
QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor [2006] 2 CLJ 532 CA ***(refd)***
R v. Rent Officer Service, ex parte Muldoon; R v. Rent Officer Service, ex parte Kelly [1996] 3 All ER 498 ***(refd)***
Teh Guat Hong v. Perbadanan Tabung Pendidikan Tinggi Nasional [2018] 2 CLJ 762 CA ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 3
Income Tax Act 1967, ss. 33, 127(3A), 134, 135
Rules of Court 2012, O. 53 r. 8

Other source(s) referred to:
De Smith, *Judicial Review of Administrative Action*, 1995, p 357
VG Ramachandran, *Law of Writs*, 6th edn, vol 1, p 683

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Reported by Suhainah Wahiduddin

JUDGMENT

Noorin Badaruddin J:

[1] Enclosure 15 is the Director General of Inland Revenue's (the "DGIR") application to intervene in the applicant's judicial review under O. 53 r. 8 of the Rules of Court 2012 ("ROC"). The applicant has filed an application for leave to apply for an order of *certiorari* for the respondent to exercise his powers under s. 135 and/or s. 127(3A) of the Income Tax Act 1967 ("ITA") to set aside or exempt the taxes raised by the DGIR against the applicant on the grounds that the taxes raised are illegal, void, unlawful and/or in excess of authority, unreasonable, irrational and denial to the legitimate expectation of the applicant.

Background

[2] The applicant is principally engaged in the business of property development.

[3] The applicant made payment to the Johor State Government in order to convert Bumiputera units to non-Bumiputera units in consequence of the applicant not being able to sell the Bumiputera lots to Bumiputera purchasers according to the supplemental agreement entered into between the appellant with the Johor State Government.

[4] The DGIR disallowed the deduction of the payment on the ground that it does not fall under s. 33 of the ITA. Notices of additional assessments all dated 28 May 2020 for the year of assessment ("YA") 2014, 2015, 2016 and 2017 were issued against the applicant.

[5] On 18 June 2020 the applicant filed their appeal *via* Form Q against the notice of assessment.

Summary Of The DGIR's Contentions

[6] Summarily, it is the DGIR's submission that being the head of a statutory body responsible to collect and administer tax in Malaysia under s. 134 of the ITA, the DGIR has direct and legal interest in this proceedings and/or in determining the issues in questions raised by the applicant which later will cause material/significant implication to the law in taxation, collection of tax and public interest.

Summary Of The Applicant's Contentions

[7] In summary, the applicant takes the position that the DGIR failed to fulfil the test of being a 'proper person' to intervene at this leave stage. The applicant submits that the current judicial review application at hand is solely to review the decision-making process of the respondent under s. 135 and/or s. 127(3A) of the ITA and that the DGIR's application at this stage is premature on the sole basis that the DGIR is not in any way involved in the decision-making process under s. 135 and/or s. 127(3A) of the ITA.

Findings

[8] The sole issue to be decided by this court is whether the DGIR ought to be allowed to intervene at this leave stage of the judicial review application by the applicant.

[9] At the outset it must be stated this court in its earlier decision in *Puncak Niaga Construction Sdn Bhd v. Menteri Kewangan Malaysia* [2021] 1 LNS 1032 (Permohonan Bagi Semakan Kehakiman No: WA-25-357-12-2020) ("*Puncak Niaga*") where similar issue herein arose had dismissed the DGIR/proposed intervener's application to intervene in the applicant's judicial review application therein. On appeal to the Court of Appeal, this court's decision was overturned and the DGIR was allowed to intervene in the taxpayer's judicial review application against the same respondent herein. The taxpayer in *Puncak Niaga* then appeal against the decision of the Court of Appeal to the Federal Court with these questions framed as questions of law:

(i) whether the DGIR's application to intervene in the judicial review application commenced against the Minister of Finance be allowed at the leave stage application;

(ii) whether the DGIR's application to intervene in the judicial review application commenced against the Minister of Finance should only be allowed upon the leave application be heard and granted.

[10] However, the Federal Court had sustained the DGIR's preliminary objection which grounded on the legal position that where matters involving intervener's application, it is not a 'decision' which is appealable by virtue of s. 3 of the Courts of Judicature Act 1964. The Federal Court did not go further than the preliminary objection raised by the DGIR/proposed intervener. In other words, the questions of law raised by the taxpayer in *Puncak Niaga* (*supra*) were not addressed by the Federal Court.

[11] In the present matter, having been made aware of the apex courts' decisions, the question is whether this court is bound to follow the decision of the Court of Appeal in *Puncak Niaga* and allowed the DGIR's application *via* encl. 15 herein.

[12] Firstly, the similar issue raised in *Puncak Niaga* and the present matter have not been resolved by the Federal Court. Therefore, the Federal Court's decision in *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405; [2009] 6 MLJ 307 ("*MAIS*") is still good law. In *MAIS* the applicant in that case took a suit against Majlis Bandaraya Shah Alam in relation to a setting up of a Muslim burial ground in Shah Alam. MAIS applied to be an intervener on the grounds that they are an interested person as they are a statutory body responsible and tasked to oversee the administration of Islam in the State of Selangor. Despite the fact that MAIS's duty to promote and protect the interest of Muslims and the Islamic community of the State of Selangor, the Federal Court disallowed MAIS's application to intervene and held that MAIS has an indirect interest, insufficient to fulfil the test of a proper person. The Federal Court through the judgment of Zulkefli Makinudin FCJ (as he then was) held as follows:

> [22] It is my view that the appellant at best has an indirect interest, in the affidavit in support of its application its interest (other than wakaf) is premised *inter alia* on the following points as spelled out under the provisions of ss. 4 to 7 of the Enactment:
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> (i) It is a statutory body;
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> (ii) It oversees the administration of Islam in the state of Selangor;
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> (iii) It has a duty to promote and protect the interest of Muslims and the Islamic community in the state.
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> [23] It is my finding that the basis of the appellant's purported interest in the present judicial review proceedings has been stated in terms which would appear to go beyond the scope of the provisions of the Enactment relied upon. Matters of local government do not fall within the objects of MAIS. MAIS had nothing to do with the decisions under challenge in the judicial review proceedings. In any event, it is not directly affected by the decisions sought to be reviewed.

[13] Secondly, although the Court of Appeal had overruled this court's decision in *Puncak Niaga*, without the benefit of the grounds of judgment which is not available as at the hearing date of the present matter, the reasons for the decision of this court being overruled remain speculative. Learned counsel for the DGIR argued that the reasons for this court's decision in *Puncak Niaga* being overruled is clear as the only issue raised before the Court of Appeal is whether the DGIR can intervene at the leave stage of a judicial review application. The learned counsel argued that since the DGIR's appeal was allowed by the Court of Appeal, it therefore can be understood that the DGIR can intervene in this present application even at the leave stage.

[14] This court disagrees with the submission. In exercising a discretionary power under O. 53 r. 8 of the ROC whether to allow a party to intervene and where there is no written grounds by the Court of Appeal in *Puncak Niaga*, the question remains whether the DGIR can automatically be allowed to intervene in every application for judicial review relating to tax matters where the "decision" relates to the respondent and the respondent alone at the leave stage.

[15] In *Petronas Penapisan (Terengganu) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2014] MSTC 30-078, Rohana Yusuf J (as Her Ladyship then was) had held that:

> Under the principle of *stare decisis*, it was held in the case of *S Selvaraja T. Singarathevar v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1997] 2 CLJ Supp 275 that the court below is bound to follow the *ratio decidendi* of a case. In view of the fact that there is no written grounds of judgment the *ratio decidendi* in *Nilai Cipta* cannot be equivocally ascertained. Thus any attempt to rely on it is just based on speculation. In view of that position, in my considered view the decision by Court of Appeal in *PCEO* which followed *American Leaf* is still good authority and the SCIT should not ignore them.

[16] Later in *Ketua Pengarah Hasil Dalam Negeri v. Rainforest Heights Sdn Bhd* [2019] 1 LNS 513 (Rayuan Sivil No: WA-14-9-06-2018), Nordin Hassan J (as His Lordship then was) had agreed with the decision of Abang Iskandar J (as His Lordship then was) in *Port Dickson Power Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2012] MSTC 30-045 which was overruled by the Court of Appeal and gave reason as follows:

> [12] On this issue, I take note that the case of *Port Dickson Power Sdn Bhd* (*supra*) has been overruled by the Court of Appeal but without the benefit of the grounds of judgment which is not available as of to date, I cannot speculate the reasons of the said decision.

[17] This court is of the same view that without the written grounds of judgment by the Court of Appeal, the *ratio decidendi* of *Puncak Niaga* cannot be ascertained. It must be borne in mind that this court is not saying that the

DGIR cannot intervene in the applicant's judicial review application. It is of the considered view that the DGIR's application should be ventilated at the substantive stage. Apart from the finding that the DGIR's legal reasoning would not be in access to the respondent's argument and that both their arguments will be similar, to allow the DGIR's application at this stage will run the risk of causing a delay to the applicant's leave application where the ordinary threshold is low with the sole questions being whether the application is frivolous and whether there is an arguable case. In *MAIS* the Federal Court had highlighted the importance of the speedy disposal of such matter and the following excerpt of the judgment is instructive:

> [4] Now, the court is blamed for the delay. The public gets frustrated. In my opinion, the court could perhaps have just gone ahead and made a decision on the application for administrative review. The question of whether the appellant should be made a party can be decided and appealed together if necessary. These delays have caused unnecessary anguish over the people for whom the appellant is supposed to be acting for.
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> [5] Courts should be more diligent in dealing with such cases. Parties expect speedy disposal of reviews. That is why applications for review of administrative decisions are provided by way of *certiorari* or *mandamus* instead of by way of a writ. The law provides for a simple way of disposing these cases. Instead of a speedy disposal of a review application, this case has taken as long as it would in a hearing of a writ. Delays such as this can also cause a hold up in the implementation of national development and losses to the people such as the developers when there is an application for review of planning permissions granted by public authorities

[18] Even the argument of the existence of a domestic remedy which forms part of the DGIR's argument to intervene, ought not be dealt with at this stage, in *QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor* [2006] 2 CLJ 532; [2006] 3 MLJ 164 and *Chin Mee Keong & Ors v. Pesuruhjaya Sukan* [2007] 5 CLJ 363, the Court of Appeal and the Federal Court had held that the existence of a domestic remedy only falls to be decided at the merit stage of the proceedings, and not at the leave stage.

[19] It must be emphasised that the decision of this court in *Puncak Niaga* was premised on the decision of the Federal Court in *MAIS*. In *Puncak Niaga* this court was of the view that although it cannot be disputed that the DGIR is an arm of the Executive as a tax collecting agent for the Government and that he has the role to protect the interest of the Federal Government and public at large in terms of tax collection, in regards to the leave application for judicial review filed by the applicant therein the sole question to be determined is the exercise of the discretionary power of the respondent and the respondent alone.

[20] Since the DGIR does not state that he is to advise the respondent or has actively involved in assisting the respondent on matters arising from the decision-making process of the latter pursuant to s. 127(3A) and/or s. 135 ITA, this court is of the considered view that the DGIR at best has only an indirect interest to the applicant's application and that the reasons given by the DGIR are insufficient to show that he is a proper person with direct interest and any additional argument that the DGIR wishes to raise can be raised through the respondent.

[21] At this stage this court is of the considered view that the DGIR does not fulfil the 'proper person' test under O. 53 r. 8 of the ROC. In *MAIS* the Federal Court had held:

> [24] I am of the view the use of the phrase 'proper person' in O. 53 r. 8(1) of the RHC must be read as referring to persons with a direct interest in this regard the test for joinder as a party in judicial review was considered by the House of Lords in *R v. Rent Officer Service, ex parte Muldoon; R v. Rent Officer Service, ex parte Kelly* [1996] 3 All ER 498. It was concluded In that case that an indirect interest, even on the part of the Secretary of State, was not sufficient to justify joinder. I am of the view the same test would apply to the appellant in the present case. Unlike the position under the UK Civil Procedure Rules ('CPR'), the right of 'any person to be heard in opposition' in our O. 53 r. 8(1) of the RHC is qualified by the requirement of that person being a 'proper person'. Rule 54.17.1 of the CPR states 'any person may apply to file evidence or make representation at the hearing of the judicial review'. There is therefore a significant qualification under our O. 53 r. 8(1) of the RHC 1980 which indicates some level of interest. It does not stand to reason for a party not having any direct interest to be allowed to be joined as a party, more so in the light of the nature of the jurisdiction being exercised in judicial review proceedings.

[22] The meaning of "proper person" has been explained in the case of *MAIS* as a person having direct interest. The DGIR's interest is purely financial. The Inland Revenue is just an agent to collect taxes for the Ministry of Finance/Government, it is of the considered view that financial interest is not a direct interest. In *MAIS*, the Federal Court had cited the House of Lords decision in *R v. Rent Officer Service, ex parte Muldoon; R v. Rent Officer Service, ex parte Kelly* [1996] 3 All ER 498 where it was concluded in that case that an indirect interest, even on the part of the Secretary of State who has to make payment to Muldoon and Kelly was not sufficient to justify joinder.

[23] Since the current judicial review application at hand is solely to review the decision-making process of the respondent under s. 135 and/or s. 127(3A) of the ITA and the provisions allow any person such as the applicant to seek exemption from the Minister of Finance, the DGIR's application at this stage is premature on the sole basis that the DGIR is not in any way involved in the decision-making process under s. 135 and/or

s. 127(3A) of the ITA. The DGIR has no say and role in the respondent's decision-making process. It is pertinent to note that at the leave stage, the court has yet to decide whether there is in fact a "decision" made by the respondent in the first place and whether such "decision" is susceptible to judicial review. It is solely between the respondent and the applicant to ventilate this issue.

[24] A proper scrutiny of the provisions of ss. 127(3A) and 135 of the ITA show that the discretion is vested solely in the Minister and not the DGIR and as such the power exercise under these provisions are vested exclusively in the respondent alone. Sections 127(3A) and 135 of the ITA are reproduced:

> Section 127
>
> (3A) The Minister may, in any particular case exempt any person from all person from all or any of the provision of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind.
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> Section 135
>
> The Minister may give to the Director General directions of a general character (not Inconsistent with this Act) as to the exercise of the functions of the Director General under this Act; and the Director General shall give effect to any directions so given.

[25] It is clear from the express wordings of ss. 127(3A) and 135 of the ITA, Parliament had empowered the Minister to make certain decisions under the ITA in respect of tax matters. It is also clear that Parliament did not intend to confer any discretion to the DGIR to intervene in the Minister's decision-making process. The Federal Court in *Krishnadas Achutan Nair & Ors v. Maniyam Samykano* [1997] 1 CLJ 636; [1997] 1 MLJ 94 had held that:

> The function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily be reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases.

[26] It is trite law that a discretionary power must be exercised by the person to whom Parliament had vested the power (see: De Smith's *Judicial Review of Administrative Action* (1995), p. 357; *Wade Administrative Law*, 9th edn). Both authors are cited in VG Ramachandran's *Law of Writs*, 6th edn vol. 1 at p. 683 as follows:

> A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another.

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The very object of conferring a power on a particular administrative authority is that the power must be exercised by that authority and cannot be sub-delegated to any other authority or official.

Wade also says:

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An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred and by no one else. The principle is strictly applied, even where it cause administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as *ultra vires* actions taken by the agents, sub-committee or delegates, however expressly authorised by the authority endowed with the power.

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[27] The above passages have been cited by the Federal Court in the case of *Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals* [2020] 1 CLJ 162 where the court held:

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[43] It was argued for the developer that the Minister has delegated his power to the Controller to make a decision under reg. 11(3). This argument in our view cannot be sustained. If the Minister has delegated his power to the Controller to make a decision under reg. 11(3), there should not and could not be an appeal process from the decision of the Controller to the Minister as it is akin to an appeal to the Minister against his own decision. Regulation 12 on the appeal would be rendered superfluous and redundant.

E

[44] Insofar as delegation of powers is concerned, we are mindful of s. 5 of the Delegation of Powers Act 1956, which reads:

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> Where by any written law a Minister is empowered to exercise any powers or perform any duties, he may, subject to s. 11, by notification in the *Gazette* delegate subject to such conditions and restrictions as may be prescribed in such notification the exercise of such powers or the performance of such duties to any person prescribed by name or office.

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[45] It must be noted that while s. 5 expressly allows the Minister to delegate his powers or duties to any person described by name or office, such delegation must be made by notification in the *Gazette*. In the present case, we observe that there is no notification published in the *Gazette* which means that there is no delegation of powers by the Minister to any other person of his duties under the Act pursuant to the Delegation of Powers Act.

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[28] The wordings of ss. 127(3A) and 135 of the ITA are clear and unambiguous. The power or authority to decide on whether to grant an exemption is vested exclusively on the respondent. Section 127(3A) ITA clearly states that the Minister can exempt any person from all or any

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provision of the Act in respect of any income whilst s. 135 ITA clearly states that the Minister can give directions of a general character. It is therefore clear that the respondent must exercise that power personally since the trust is being placed upon him.

[29] In *Puncak Niaga* as well as in the present matter, the judicial review application stems from the respondent's failure in replying to the applicant's letter requesting for the respondent to exercise his power vested in him under s. 127(3A) and/or s. 135 of the ITA and it is obvious that the DGIR was not involved in the 'non-reply' to the request by the applicant. Nowhere can it be shown that the DGIR is involved in the alleged 'decision-making' process of the respondent under ss. 135 and/or 127(3A) ITA. As such, the DGIR cannot be said to have a direct interest in the matter and with respect, since there is no written judgment by the Court of Appeal in *Puncak Niaga* and relying on the Federal Court's decision in *MAIS*, this court adopts the same view in *Puncak Niaga*.

[30] It must be reiterated that the application to intervene by the DGIR should be ventilated at the substantive stage. In accordance with the Court of Appeal's decision in *Teh Guat Hong v. Perbadanan Tabung Pendidikan Tinggi Nasional* [2018] 2 CLJ 762; [2015] 3 AMR 35, there is no necessity to go into merits of the case at leave stage. As such, the DGIR's application should not be allowed as the merits of case would only be raised at substantive stage.

Conclusion

[31] Premised on the above, encl. 15 was dismissed.